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JOSEPH JONES

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSEPH JONES

Plaintiff,

v.

PEPSICO, INC. LONG TERM
DISABILITY PLAN, and DOES 1
through 10, Inclusive,

Defendants.

Case No. :

**COMPLAINT FOR DAMAGES
UNDER THE EMPLOYEE
RETIREMENT INCOME SECURITY
ACT**

[29 U.S.C. §1132(a)(1)]

Plaintiff, JOSEPH JONES (hereinafter referred to as "Plaintiff"), complains of Defendants PEPSICO LONG TERM DISABILITY PLAN (hereinafter referred to as the "PLAN") and DOES 1 through 10, as follows:

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JURISDICTION AND VENUE

1 2. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331,
2 1337 and 29 U.S.C. §1132(a)(1), (e), (t), and (g), of the Employee Retirement
3 Income Security Act of 1974, 29 U.S.C. §1101. et. seq. (hereafter ERISA) as it
4 involves a claim by Plaintiff for disability benefits under an employee benefit plan
5 regulated and governed under ERISA. Jurisdiction is predicated under these code
6 sections as well as 28 U.S.C. §1331 as this action involves a federal question.

7 2. The events or omissions giving rise to Plaintiff's claim occurred in this
8 judicial district, thus venue is proper here pursuant to 28 U.S.C. §1391(b)(2), and
9 the ends of justice require it.

10 3. The ERISA statute at 29 U.S.C. §1133, in accordance with
11 Regulations of the Secretary of Labor, provides a mechanism for internal appeal of
12 benefit denials. Those avenues of appeal have been exhausted.

13 4. Plaintiff exhausted the appeal process on or about July 7, 2014, at
14 which time he was informed by the claim administrator that the decision to deny his
15 claim for LTD benefits was final and that he has the right to bring a civil action
16 under ERISA §502(a).

17 5. The alleged breach of contract arising from the claim administrator's
18 decision to terminate benefits as of July 7, 2014, occurred in the Central District of
19 California, making venue proper pursuant to 29 U.S.C 1132 (e).

GENERAL ALLEGATIONS

20 6. Plaintiff is informed and believes and thereon alleges that the PLAN is
21 an employee welfare benefit plan established and maintained by Plaintiff's
22 employer, PEPSICO, INC, to provide comprehensive disability benefits to eligible
23 employees.

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1 7. The PLAN can be sued as an entity pursuant to 29 U.S.C. §1132(d)(1).

2 8. Plaintiff is an individual citizen and resident of the State of California,
3 County of Los Angeles, residing within the Central District of the State of
4 California.

5 9. Based upon information and belief, the PLAN is self-insured, however
6 a conflict may exist by virtue of the fact that benefits from the PLAN may be paid
7 from the general assets of PEPSICO, INC.

8 10. The PLAN hired Sedgwick, a third party claim administrator, to
9 administer claims made under the PLAN, and delegated claims making authority
10 provided by the Plan to Sedgwick.

11 **FACTUAL BACKGROUND**

12 11. At all times relevant hereto, Plaintiff, currently age 32, was employed
13 by PEPSICO, INC as a Bulk Lead Route Sales Representative between April 19,
14 2010 and March 11, 2012, and was and is a participant and beneficiary of the
15 PLAN.

16 12. Plaintiff's job was determined to be a heavy physical demand level
17 occupation. His job duties involved preparing paperwork for daily sales via a hand
18 held computer by requesting the manifest from the main computer system. He was
19 required to perform a pre-trip inspection of the truck before driving to his first work
20 site. While on a site, he prepared stores for delivery and filled displays and stocked
21 the shelves and back rooms. Most of his time was spent in the field, and involved
22 prolonged standing and walking, some sitting, bending and stooping, lifting and
23 carrying, and repetitive use of his hands.

24 13. The PLAN'S definition of "Totally Disabled" or "Total Disability"
25 means that because of injury or sickness:

26 “(i) Cannot Engage in Own Occupation: During the first twenty-four
27 (24) months of the Participant's Period of Disability, the
28

Participant is unable, due to illness, injury or pregnancy, to perform all of the material and essential functions duties pertaining to his Own Occupation. Material and Essential duties are the duties that are normally required for the performance of the Participants Own occupation and cannot reasonably be omitted, changed or accommodated. Loss of a professional or occupational license or certificate does not by itself constitute disability.

(ii) Not Engaged in a Reasonable Occupation: The participant is not engaged in any Reasonable Occupation at any time other than an Approved Rehabilitation Program.

(iii) Unable to Engage in a Reasonable Occupation: Beginning from and after the first day of the twenty-fifth (25) month of the participant's continuous Period of Disability, the participant is unable to engage in any Reasonable Occupation:

(a) For which the participant is, or may reasonably be qualified by education, training, or experience (as defined in the Reasonable occupation definition), and

(b) That is available to the Participant in a reasonable geographic area as defined by the Claims Administrator.

14. Plaintiff claimed disability as of March 11, 2012 due to syncope and posttraumatic stress disorder.

15. Plaintiff has limitations and restrictions on his ability to stand, walk, sit, drive, lift, carry, bend, squat, crawl, and reach shoulder level. He also has limitations and restrictions on his ability to grasp, push, pull, and fine manipulation, as well as to use of his feet for repetitive movements such as operating foot controls.

1 16. Plaintiff's treating physicians support the various physical and
2 psychiatric diagnoses and the limitations and restrictions that prevent him from
3 being able to perform the material and essential functions of any occupation.

4 17. Plaintiff had a loop monitored surgically implanted on August 27,
5 2012 to help determine the cause of his fainting episodes.

6 18. Plaintiff was undergoing biofeedback between February 2013 and
7 August 2013, at which time his insurance no longer covered the procedure.
8 Plaintiff was getting some beneficial results but it did not cure the problem.

9 19. While undergoing treatment from his various physicians, it is noted
10 throughout the medical records and claims notes that plaintiff would pass out in
11 front of his doctors. No specific cause has been determined and plaintiff continues
12 to experience at least one episode every two (2) weeks.

13 20. Plaintiff was approved for the maximum 27 weeks of Short-Term
14 Disability benefits that expired on September 15, 2012.

15 21. On September 16, 2012, the claim administrator notified Plaintiff that
16 his claim was approved because the medical evidence supported the diagnosis of
17 syncope.

18 22. On or about May 9, 2013, Plaintiff was informed by the claims
19 administrator, that if medical records showed that Plaintiff could not return to work
20 due to his continued loss of conscious, that his benefits could be extended.

21 23. Between September 16, 2012, and March 10, 2014, the claims
22 administrator continued to extend Plaintiff's benefits based upon updated medical
23 notes which stated that plaintiff continued to have episodes where he would pass
24 out unexpectedly and without any particular warning or trigger.

25 24. From Plaintiff's date of disability on March 11, 2012, through the
26 approval of 27 weeks of Short-Term Disability and 24 months of Long-Term
27 Disability under the own occupation definition of disability, plaintiff's medical
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1 condition did not change.

2 25. On or about March 18, 2014, the claim administrator's peer review
3 physician reviewed the medical records and spoke with plaintiff's treating
4 physicians and concluded that Plaintiff was not disabled from any occupation due
5 to his syncope condition. Furthermore, the claims administrator's peer review
6 physician rendered his own diagnosis regarding plaintiff's condition without ever
7 having examining the patient. The peer review doctor determined that Plaintiff
8 could work as long as he remained hydrated.

9 26. Plaintiff submitted a timely written appeal on August 10, 2014. In
10 addition, plaintiff's treating physician provided updated restrictions and limitations
11 after further reviewing the plaintiff's records and concluded that he could not work
12 any type of gainful employment due to his sudden episodes of fainting, and that in
13 addition plaintiff was having short-term memory loss.

14 27. The claim administrator conducted an appellate review and had a
15 psychological and cardiac evaluation completed which revealed that plaintiff's
16 symptoms would in fact be expected to impact his functionality, however, the claim
17 administrator's reviewing doctors concluded that the restrictions and limitations
18 offered by plaintiff's treating physician's were not supported.

19 28. On or about July 2, 2014, the claim administrator concluded that
20 although the medical evidence supports limitations and restrictions related to his
21 safety due to syncope, Plaintiff can work full-time in a sedentary occupation within
22 a normal office environment.

23 29. On July 7, 2014, Sedgwick denied Plaintiff's claim for LTD benefits
24 on appeal, concluding that there are no clinical findings to support plaintiff's
25 inability to work in any capacity.

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COUNT ONE

**For Damages and Benefits Against Defendant
PEPSICO, INC LONG TERM DISABILITY PLAN
(Pursuant to 29 U.S.C. Section 1132(a)(1))**

30. Plaintiff hereby realleges and incorporates paragraphs 1 through 29 as if fully set forth herein.

31. Despite the fact that the PLAN is self-funded, a conflict of interest exists because LTD benefits payable under the PLAN are paid from the general assets of PEPSICO, INC.

32. The claim administrator's decision to terminate Plaintiff's benefits was illogical, implausible, and without support in inferences that could reasonably be drawn from facts in the record, because every doctor who personally examined plaintiff concluded that he has limitations and restrictions related to his safety due to syncope.

33. The claim administrator's decision to terminate plaintiff's benefits was also illogical and implausible because the claim was approved and then denied based essentially on the same medical evidence, with no medical records to document any improvement in Plaintiff's condition within the period between when the claim was initially approved and when benefits were terminated.

34. As a direct and proximate result of the claim administrator's wrongful denial of LTD benefits, Plaintiff contends that the PLAN has breached the contract by not paying benefits, payable at the rate of \$1,863.48 per month (\$931.74, bi-weekly), less appropriate offsets, from September 16, 2014 to the present and continuing.

35. As a further direct and proximate result of the denial of benefits, and due to Defendants' abuse of discretion, Plaintiff had to engage the services of attorneys to assist him in recovering benefits due him under the terms of the PLAN.

1 Accordingly, Plaintiff will be entitled to reasonable attorney's fees in an amount
2 according to proof pursuant to 29 U.S.C. Section 1132(g)(1).

3 WHEREFORE, plaintiff demands judgment against Defendants, and each of
4 them, as follows:

5 **Count One**

6 1. Damages for breach of contract pursuant to 29 U.S.C. Section
7 1132(a)(1)(B), for Long-Term Disability benefits payable at the rate of \$1,863.47
8 per month, less appropriate offsets, from September 15, 2014 to the present and
9 continuing;

10 2. Interest on said amounts in accordance with law;


11 3. For reasonable attorney's fees and costs in a sum according to proof,
12 pursuant to 29 U.S.C. Section 1132(g)(1).

13 4. For any further relief that the court deems reasonable and just.
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15 DATED: January 26, 2015

Respectfully submitted,

16 LAW OFFICES OF KEVIN ZIETZ

17 By: 
18 Kevin M. Zietz
19 Attorney for Plaintiff
20 JOSPEH JONES
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